

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Michel H. Malek

Title: SPINE STABILIZATION
SYSTEMS

Appl. No.: 10/722,119

Filing Date: 11/25/2003

Patent No.: 7862586

Grant Date: 1/4/2011

Examiner: David C. Comstock

Art Unit: 3733

Confirmation 4839

Number:

**REQUEST FOR RECONSIDERATION OF PATENT TERM ADJUSTMENT FOR
PATENT UNDER 37 C.F.R. §1.705(d)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Applicants have calculated PTA for the captioned patent and have determined that the patent is entitled to 2032 days of Patent Term Adjustment, as shown on the attached sheet, which shows the relevant delays under 37 CFR §§1.702, 1.703 and 1.704:

(a) Total PTO delay: 2170 days

(b) Total Applicant delay: 138 days

Final PTA Determination under 37 CFR §1.703(f): 2032 days

In accordance with 1.705(b)(2)(ii), the relevant dates as specified in §§1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled are clearly represented in the attached PTA Calculation.

The relevant dates where the applicant is not in agreement with the PTO's determination are discussed in more detail below.

The above discrepancy occurs as a result of the PTO's failure to include 81 days of additional PTA accumulated in applicant's favor based on the provisions of 37 C.F.R. §§ 1.702(b)(1) and 1.703(b)(1), wherein PTA begins to accumulate in applicant's favor on the day after the commencement of three years from the filing date. Therefore, the 81-day discrepancy falls under the 3 year rule.

In accordance with §1.705(b)(2)(iv)(A), the circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704 are clearly represented in the attached PTA Calculation.

Applicants therefore respectfully request that the patent be accorded 2032 days PTA.

Fees in the amount of \$200.00 set forth in 37 C.F.R. § 1.18(e) to cover the fee for this request are being paid by credit card via EFS-Web.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. § 1.705, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by the credit card payment instructions in EFS-Web being incorrect or absent, resulting in a rejected or incorrect credit card transaction, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741.

However, because this PTA error is due to a Patent Office error in interpreting and applying the PTA statute, a refund of the fee is respectfully requested.

Respectfully submitted,

Date February 28, 2011

By /Eric N. Huston/

FOLEY & LARDNER LLP
Customer Number: 23524
Telephone: (608) 258-4205
Facsimile: (608) 258-4258

Eric N. Huston
Attorney for Applicant
Registration No. 65,684